

Ordinance No.: 16-47  
Subdivision Regulation Amend. No.: 09-03  
Concerning: Enforcement-Amendments  
Revised: 3/25/10; Draft No. 2  
Introduced: October 9, 2009  
Public Hearing: November 24, 2009  
Adopted: April 6, 2010  
Effective: April 26, 2010

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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By: District Council at the Request of the Planning Board

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**AN AMENDMENT** to the Subdivision Regulations to:

- (1) revise the procedures to enforce a Planning Board action; and
- (2) generally amend the provisions for issuance, enforcement, and appeals of Planning Board actions.

By amending

Montgomery County Code  
Chapter 50, Subdivision of Land  
Section 50-41, Enforcement

**Boldface**

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

\* \* \*

*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

## OPINION

Subdivision Regulation Amendment No. 09-03 was introduced on October 6, 2009 at the request of the Planning Board.

A public hearing was advertised for November 17, 2009. The County Council thereafter postponed the hearing. On November 24, 2009 the Council held the public hearing to receive testimony concerning the proposed amendment. The Planning Board representative spoke in favor, as did David Brown. There was no opposition. The regulation amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession to review the amendment on March 17, 2010. The Committee recommended the following revisions beyond editorial changes:

- 1) Revise definition of administrative civil penalty and civil fine to read as follows:  
Civil Penalty - A monetary penalty imposed by the Planning Board after considering the factors enumerated in this Chapter for violating a Planning Board action.  
Civil Fine - A requirement to pay a predetermined sum of money set forth on an administrative citation for violating a Planning Board action.
- 2) Authorize the Planning Director to use a citation that satisfies the detailed specifications in SRA 09-03; and require fines to be the maximum allowed by Article 28 (\$500 per violation per day).
- 3) Limit the maximum civil penalty to 150 percent of the estimated cost to bring the violation into compliance.

The District Council reviewed Subdivision Regulation Amendment No. 09-03 at a worksession held on April 6, 2010, and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Subdivision Regulation Amendment No. 09-03 will be approved as amended.

## ORDINANCE

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

**Sec. 1. Section 50-41 is amended as follows:**

**50-41. Enforcement.**

(a) *Definitions.* In this section, these terms have the following meanings:

Administrative Civil Penalty. [[A requirement to pay a sum of money for violating a Planning Board action.]] A monetary penalty imposed by the Planning Board after considering the factors in this Section for violating a Planning Board Action.

[(1)] Citation. A document noting a violation of a Planning Board [Action] action, seeking to impose a civil fine or [penalty] corrective action.

[(2)] Civil Fine [or Penalty]. A requirement to pay a predetermined [monetary] sum of money [upon the issuance of a citation] specified in an administrative citation for violating a Planning Board [Action] action.

[(3)] Enforcement Agent. The Planning Director, or the Director's designee responsible for determining compliance with a Planning Board [Action] action.

Notice of Hearing. An administrative notice issued by the Planning Director that notifies an alleged violator where and when an enforcement hearing will be held by the Planning Board or the Board's designee to address an alleged violation.

Notice of Violation. A notice issued by an enforcement agent that notifies a recipient of a violation and specifies the remedial action that the recipient must take to avoid further enforcement action.

[(4)] Person. An individual, partnership, corporation, organization, or other entity, or combination thereof, [whether singular or plural] that owns property or otherwise has an interest or responsibility for property that [was] is the subject of a Planning Board [Action] action.

[(5)] Planning Board [Action] action. A final decision on a preliminary plan,

site plan, project plan, supplementary plan, water quality plan, or other plan, including all associated terms, conditions, requirements, and other obligations or limits, made by the Planning Board under state law and Chapters 50 and 59, including any regulations issued under state or County law. A Planning Board [Action] action does not include a decision made by the Board under Chapter 22A.

[(6)] *Planning Director*. The staff member in the [Department of Park and Planning] Maryland-National Capital Park and Planning Commission who is in charge of all planning, zoning, and land development approval activities [of the Department] for the Commission in Montgomery County, and who reports directly to the Planning Board, or the Director's designee.

[(7)] *Stop Work Order [or Corrective Order]*. An administrative order issued by an [Enforcement Agent requiring] enforcement agent that requires a person to discontinue any further development, construction, or other land disturbance activity authorized by a Planning Board [Action] action until a violation has been corrected.

[(b)] *Citation; Civil Fine or Penalty*.

(1) The Enforcement Agent may deliver a citation to a person believed to be in violation of a Planning Board Action. The Planning Board will retain a copy of the citation. The citation must include a certification by the Enforcement Agent attesting to the truth of the matters set forth in the citation.

(2) The citation must contain at least the following information:

- a. The name and address of the person charged;
- b. The nature of the violation;
- c. The place where and the approximate time that the violation occurred;

- d. The amount of the fine assessed;
- e. The manner, location, and time in which the fine may be paid and the party to whom the fine should be paid;
- f. The date by which the payment must be made; and
- g. A statement advising the person of the right to elect to stand trial for the violation.

The Planning Board may utilize any citation consistent with this Section, including the State of Maryland Uniform Civil Citation form.]

(b) Notice of Violation.

- (1) The Planning Director may issue a notice of violation to a person whom the Director believes to have committed a violation of a Planning Board action. The Director must retain a copy of the notice. A notice of violation issued under this subsection must be served on the alleged violator personally, on the alleged violator's agent at the activity site, or by certified mail to the alleged violator's last known address.
- (2) The notice of violation must contain at least the following information:
  - (A) the name and address of the person charged;
  - (B) the nature of the violation;
  - (C) the place where and the approximate date when the violation occurred;
  - (D) a statement advising the alleged violator of the corrective or remedial action which must be taken and the date by which the corrective or remedial action must be completed. The corrective or remedial action may include a meeting with

Commission staff to establish a compliance plan; and

(E) a statement advising the alleged violator of the right to a hearing before the Planning Board or its designee.

(c) Citation.

(1) The Planning Director may deliver [[a]] an administrative citation to a person whom the Director believes to have committed a violation of a Planning Board action. The Director must retain a copy of each administrative citation. The Director must attest to the truth of the facts and allegations in the administrative citation. [[A]] An administrative citation issued under this subsection must be served on the alleged violator personally, on the alleged violator's agent at the activity site, or by certified mail to the alleged violator's last known address.

(2) The administrative citation must contain at least the following information:

(A) the name and address of the person charged;

(B) the nature of the violation;

(C) the place where and the approximate date when the violation occurred;

(D) the amount of fine assessed;

(E) where, when, and to whom the fine may be paid; and

(F) a statement advising the violator of the right to a hearing before the Planning Board or its designee.

The Planning [[Board]] Director may use any administrative citation consistent with this Section [, including the State Uniform Civil Citation form]].

(d) Notice of Hearing.

- (1) The Planning Director may issue a notice of hearing, which must be served on the alleged violator personally, on the alleged violator's agent at the activity site, or by certified mail to the alleged violator's last known address.
- (2) The notice of hearing must contain at least the following information:
- (A) the name and address of the person charged;
  - (B) the nature of the violation;
  - (C) the place where and the approximate date when the violation occurred; and
  - (D) a statement advising the alleged violator of the date, time, and location of the hearing before the Planning Board or its designee.

[(c)] (e) *[Imposition of] Civil [Fines and Penalties] Fine and Penalty.*

- (1) A citation may require the [payment of] recipient to pay a civil fine [or penalty] for [the alleged] a violation of [the] a Planning Board [Action] action.
- (2) The [[maximum]] [amount of the] fine for each violation of a Planning Board [Action] action is [set at \$500.00] the maximum allowed by Article 28 §7-116(h) of the Maryland Code as amended for each day that the violation [has occurred] continues.
- (3) Each day that [the] a violation has not been corrected [shall] must be [considered] treated as a separate violation, and the applicable fine [or penalty will] must continue to accrue each day until the violation is corrected[,] without [the need of] issuing a new citation each day.
- (4) In addition to any other remedy under this Article, a person who violates a Planning Board action, any applicable regulation, or any associated agreement or restriction, may be subject to an

administrative civil penalty.

The administrative civil penalty must not exceed 150% of the estimated cost to bring the violation into compliance.

(5) In setting the amount of the administrative civil penalty, the Planning Board or its designee must consider:

(A) the willfulness of the violation;

(B) the degree of deviation from the approved Planning Board action;

(C) the cost of any needed corrective action or restoration;

(D) any adverse impact on the immediate neighborhood and the larger community;

(E) the extent to which the subject violation is part of a recurrent pattern of the same or similar violations committed by the violator;

(F) any economic benefit that accrued to the violator or any other person as a result of the violation;

(G) the cost to implement any conditions in the applicable Planning Board action;

(H) the degree of cooperation shown, or voluntary mitigation measures taken, by the violator;

(I) the extent to which any other person contributed to the violation;

(J) the impact, if any, on the violator's ability to perform corrective actions because of a change in ownership of the property; and

(K) any other relevant factor.

(6) The Board, after a public hearing on the violation, must adopt a resolution which specifies the amount of any administrative civil



penalty and the Board's reason to impose the penalty.

[(d)] (f) *[Request for District Court Review] Hearing.*

(1) A person who receives a citation imposing a civil fine or [penalty] a notice of violation may elect [to stand trial for the offense] a hearing before the Planning Board or its designee by filing a request for hearing with the [Planning] Board [a notice of intention to stand trial]. The [notice of intention] request for hearing must be [given to the Chairman of] received by the [Montgomery County Planning] Board [no less than 5 days before the date that the payment is due as established on the citation.] within 15 days after the administrative citation or notice of violation was issued. The filing of a request for a hearing does not stay an administrative order to stop work, stabilize a site, or stop a violation.

(2) [Upon receipt of the notice of intention to stand trial, the Planning Board will forward to the District Court having venue a copy of the citation and the notice of intention to stand trial. On receipt of the citation, the District Court will schedule the case for trial and notify the defendant of the trial date]. If the Board or its designee receives a request to hold a hearing under this Article, the Board or its designee must promptly schedule a hearing, unless the requestor consents to a delay, and must issue a notice of hearing.

(3) The Board may assign a hearing officer, including a Hearing Examiner from the Office of Zoning and Administrative Hearings, to conduct a public hearing and submit a report and recommendation on any alleged violation of this Chapter or of a Planning Board action. The hearing officer must submit the required report and recommendation to the Board not later than 60 days after the hearing

record closes, but the hearing officer may by order extend the time to file the report.

- (4) All fines, penalties, or forfeitures collected by the Planning Board [or District Court for the violations will] under this [[Chapter]] Section must be remitted to the Planning Board[,] and placed in the general funds of the Maryland-National Capital Park and Planning Commission, and may be [utilized] spent by the Commission for project corrections, plan enforcement, or other Commission purposes. The Commission, in its sole discretion, may [utilize] spend collected fines or penalties to perform or correct some or all [of the] violations noted in [the] [[a]] an administrative citation[,] without obligating the Commission instead of the person responsible to [undertake project corrections in lieu of the developer] correct any violation.

[(e)] (g) *[Failure to Pay] Nonpayment of Fine [or Penalty]*.

- (1) If a person who receives [[a]] an administrative citation [for a violation,] does not timely pay the fine by the [payment] due date [as established] listed in the administrative citation [and fails to] or file a [notice of intention to stand trial] request for hearing, a formal notice of the violation [shall] must be sent to the person's last known address. If the administrative citation is not satisfied within 15 days [from the date of] after the notice is issued, the [person] recipient is liable for an additional fine, as specified in the notice, which must not [to] exceed twice the original fine.
- (2) If, after 35 days after the notice under this subsection is issued, the [citation] fine due is not [satisfied] paid, the Planning Board [may request adjudication of the case through the District Court. The District Court will schedule the case for trial and summon the

defendant to appear.] must schedule and hold a hearing and, after holding the hearing, may impose any civil fine or administrative civil penalty authorized by this Section, and also may:

(A) suspend or revoke the plan that is the subject of a Planning Board action;

(B) approve a compliance program that lists each remedial action that must be taken;

(C) require the violator to post a bond or other surety to guarantee completion of a compliance program;

(D) allow the violator to propose modifications to the plan; or

(E) take any combination of these actions.

[(f)] (h) *[Prosecution by] Authority of the Office of the General Counsel.* The

[Office of the] General Counsel [for] of the Maryland-National Capital Park and Planning Commission [will] may prosecute [a] and take any other necessary legal action regarding any violation under this [section] Section.

[(g)] (i) *Enforcement rules; Conduct of Hearing.* [Proceedings before the District Court will be conducted in such manner as provided in Article 23A, Sections 3(b)(8) through (15) of the Maryland Code Annotated.] The Planning Board must:

(1) adopt rules to administer and enforce this Section as a method (2) regulation, subject to Council review as provided in Section 2A-15; and

(2) conduct any proceeding under this Section as provided in those rules.

[(h)] *Payment of Court Costs.* A person found by the District Court to be in violation of a Planning Board Action will pay the costs of the proceedings in the District Court.]

[(i)] (j) *[Issuance of] Stop Work [Orders or Corrective Orders] Order.*

- (1) [In addition to the authority to impose civil fines and penalties, in instances where] The enforcement agent may issue a stop-work order if the [Enforcement Agent] enforcement agent reasonably [determines] finds that:
- [a.] (A) a person is [in violation of] violating any element of a Planning Board [Action,] action; and
- [b.] (B) the violation threatens or may threaten the public health, safety, or welfare [are threatened or may be threatened because of the violation; then Enforcement Agent may also issue a stop work order or corrective order].
- (2) [An] A stop-work order must include the following information as [may be] applicable:
- [a.] (A) [The] the name and address of the person charged;
- [b.] (B) [The] the nature of the violation;
- [c.] (C) [The] the place where and the approximate [time that] date when the violation occurred; and
- [d.] (D) [A] a clear statement [indicating] of the action that must be taken or discontinued to cure the violation, including [the] any requirement to prepare a plan of compliance. [; and]
- [e.] The date, approximate time, and location for the Planning Board hearing to review the order.]
- The [order must include a certification by the Enforcement Agent attesting] enforcement agent must attest to the truth of the [matters set forth] facts and allegations in the order.
- (3) The [Enforcement Agent] enforcement agent must prominently display the order in close proximity to the location where the violation has occurred. In addition, the [Enforcement Agent] enforcement

agent may deliver or mail, as practical, a copy of the order to the last known address of the person [that] who secured approval of the Planning Board [Action] action.

- (4) When [an] a stop-work order has been posted, the recipient must immediately discontinue any further development or construction activities authorized [in accordance with the] by a Planning Board [Action] action until [such time as] the order is rescinded. [An] A stop-work order [posted by the Enforcement Agent has the effect of suspending] suspends the [entire underlying] Planning Board [plan] approval of the entire underlying plan, unless:

[a.] (A) the Planning Board, in [its consideration of] taking the

Planning Board [Action] action, approved phasing [for] of the project; and

[b.] (B) the [Enforcement Agent determines] enforcement agent finds that the violation involves only [relates to either]:

- (i) [a certain phase] one or more phases of [the] a project, but not other phases of the same project; or
- (ii) activities on a single lot or parcel.

In these instances, the order may only suspend the Planning Board's approval as it relates to those phases or lots [determined to be in] where the violation exists.

- (5) [Upon posting an order, the Enforcement Agent will schedule a review hearing with the Planning Board at the Board's next available regular session.] The recipient of a stop-work order may request a hearing to contest the validity of the order. [In the event that] If the enforcement agent finds that a hearing before the Planning Board is not practical in a reasonable [period of] time, [as determined by the

Enforcement Agent the matter may be reviewed by the Chairman] the  
Chair or Vice-Chair of the [Planning] Board [or Vice-Chair] may  
review the order. A determination by the Chair or Vice-Chair [will  
have] has the same effect as if the Board [acted under this section]  
reviewed the order. The [Planning] Board or [Chairman] Chair, if  
applicable, [will hear the case] must review the order de novo. [In the  
event] If the violation is corrected and a plan of compliance prepared  
by the [person prior to] recipient of the order before the hearing [as] is  
confirmed by the [Enforcement Agent] enforcement agent, the hearing  
[will] must be cancelled.

- (6) At the Planning Board hearing, the [Enforcement Agent will indicate]  
enforcement agent must justify to the Board the grounds and  
reasoning [for issuing] to issue the order. The recipient must [state all  
grounds concerning] explain why the order should be discontinued,  
and may propose a plan of compliance indicating how and when the  
violations will be corrected. The [Planning] Board [will determine]  
must decide if the order should be continued, modified, or rescinded,  
and if a plan of compliance should be approved. The Board's  
[determination] decision that [the] a stop-work order should continue  
[has the effect of revoking the] revokes any underlying [Planning]  
Board approvals for the entire project or [portions] any part of the  
project as [determined by] the Board specifies until [such time as] the  
violation is corrected.

- (7) [An appeal of a] A Board decision [of the Planning Board not] to  
continue or modify [or rescind] an order [will be administered as an]  
may be [[appealed]] the subject of a petition for judicial review to the  
Circuit Court under the rules for [[appeals of]] the review of

administrative [appeal filed with the circuit court, not as a municipal infraction] agency actions. [The Board of Appeals does not have jurisdiction to review an administrative appeal arising from a decision of the Planning Board.]

(8) [An] A stop-work order [will] must be rescinded when the [Planning] Board or [Enforcement Agent determines] the enforcement agent finds that [the violation has] all violations specified in the order have been satisfactorily corrected, which determination should not be unreasonably withheld, or the Board approves a compliance plan that addresses any uncorrected violation.

[(j)] (k) *Other Remedies*. The authority in this Section to issue civil fines, administrative civil penalties, and impose stop work orders are in addition to any other [rights or] authority of the Planning Board to enforce its actions, including seeking injunctive, declaratory, or other relief. The [election] decision to pursue one remedy does not preclude the [Planning] Board from pursuing [such] any other available [remedies as the Board deems appropriate] remedy.

[(k)] (l) *Exclusive Authority*. The Planning Board or its designee has exclusive authority to enforce violations of a Planning Board [Action] action. The authority granted in this Chapter supersedes any authority [for enforcing] to enforce a Planning Board [Actions] action [that may have been] granted to the Planning Board or any other [officer, agent, or] County or State agency [of Montgomery County or the State of Maryland in Chapter 1 of the Code].

349 **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of  
350 Council adoption.

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352 *Approved:*

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Isiah Leggett, County Executive


4/19/10  
Date

357 *This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

4/19/10  
Date